

C O N F I D E N T I A L

OGC 81-04222

22 May, 1981

MEMORANDUM FOR:

DC/Operations Group/FBIS

25X1

FROM:

Office of General Counsel

25X1

SUBJECT:

FBIS Agreement

Attached for your files are copies of a 15 May 1981 Memorandum of Law written by Nancy Ely, DoS, and two cables which Ely forwarded to me.

25X1

Attachment

UNCLASSIFIED WHEN SEPARATED
FROM ATTACHMENT

State Dept. review completed

C O N F I D E N T I A

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DEPARTMENT OF STATE

Washington, D.C. 20520

81-04219

May 15, 1981

MEMORANDUM OF LAW

SUBJECT: Circular 175 Procedure: Request for Authority to Negotiate and Conclude an Agreement with the Government of Swaziland to Establish a Bureau of the Foreign Broadcast Information Service (FBIS) in the Kingdom of Swaziland

In the accompanying memorandum, the Bureau of African Affairs requests authority, pursuant to Circular 175 procedures, for the negotiation of an agreement with the Government of Swaziland to establish a bureau of the Foreign Broadcast Information Service (FBIS) in the Kingdom of Swaziland. The memorandum recommends that the U.S. Ambassador to Swaziland be authorized to negotiate and conclude an exchange of notes on this subject.

The legal authority for the agreement contemplated is Section 102(d) of the National Security Act of 1947, 50 U.S.C. §403(d), National Security Council Intelligence Directive (NSCID) No. 2, and Section 1-8 of Executive Order 12036.

Section 102(d) of the National Security Act of 1947 sets out the general powers and duties of the Central Intelligence Agency which includes the duty "to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct."

National Security Directive No. 2 provides the following:

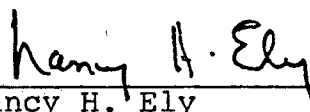
"The Department of State shall have primary responsibility for, and shall perform as a service of common concern, the collection abroad, i.e., outside the United States and its possessions, of political, sociological, economic, scientific and technical information."

The proposed FBIS bureau in Swaziland is designed to improve political and economic reporting on Southern Africa.

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The proposed agreements do not involve matters requiring further review under the National Environment Policy Act of 1969, 42 U.S.C. §4321 (1976 ed.) or under Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions) of January 4, 1979, 44 Fed. Reg. 1957. The agreements would constitute international agreements within the meaning of the Case Act, 1 U.S.C. §112b, as amended, and the text of the exchange of notes and any implementing arrangements would be transmitted to the Congress once concluded.

For the above reasons, it is the opinion of this office that the proposed agreement can properly be entered into by the U.S. Ambassador in Swaziland as an executive agreement pursuant to existing legal authority and the Secretary of State's authority for the conduct of the foreign relations of the U.S. (22 U.S.C. §2656 (1978)).



Nancy H. Ely
Assistant Legal Adviser
for African Affairs

Drafted:L/AF:NHEly:emb
x23736:5/15/81

Clearance: L/T - *CW* CWillson

CONFIDENTIAL

Department of State

INCOMING
TELEGRAMPAGE 01 MBABAN 01549 01 OF 02 151338Z
ACTION AF-10

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MBABAN 01549 01 OF 02 151338Z

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FM AMEMBASSY MBABANE

TO SECSTATE WASHDC IMMEDIATE 2088

INFO FBIS WASHDC IMMEDIATE

CONFIDENTIAL SECTION 01 OF 02 MBABANE 1549

(CORRECTED COPY - E.O. LINE AND PARA 5)

E.O. 12065: GDS 5/14/87 (MATHERON, RICHARD C), OR-M

TAGS: PINT, WZ, US

SUBJECT: FBIS INSTALLATION

REF: (A) STATE 123077, (B) STATE 89788

1. CONFIDENTIAL-ENTIRE TEXT

2. SUMMARY: AMBASSADOR AND PERMANENT SECRETARY IN DEPUTY PRIME MINISTER'S OFFICE, BOTH ACCOMPANIED BY LAWYERS, HAVE ARRIVED AT MINOR REVISIONS IN DRAFT TEXT OF FBIS AGREEMENT WHICH SHOULD BE ACCEPTABLE TO RESPECTIVE GOVERNMENTS. DURING MEETING, GOS SHOWED DETERMINATION TO GET THIS MATTER "WHICH HAS DRAGGED ON LONG ENOUGH OUT OF THE WAY," TO USE THE PERMSEC'S WORDS. ACTION REQUEST: WASHINGTON APPROVAL BY 08 LOCAL TIME MAY 19 AND CIRCULAR 175 AUTHORIZATION ASAP. END SUMMARY

3. VERY MUCH APPRECIATE REFTEL A. AID LEGAL ADVISOR WILLIAMS AND I MET TO DISCUSS APPROVED DRAFT (REFTEL B) MORNING MAY 14 WITH DEPUTY PRIME MINISTER'S PERMANENT SECRETARY A.R. SHABANGU AND SENIOR CROWN COUNSEL A.S. DUJON. FROM TENOR OF SHABANGU'S REMARKS, IT IS CLEAR THAT GOS DESIRE TO MOVE AHEAD TO COMPLETE AGREEMENT PRIOR TO MY SCHEDULED JUNE 5 DEPARTURE AND TO DO SO IN SPIRIT OF CORDIAL RELATIONS PRESENTLY EXISTING BETWEEN OUR TWO COUNTRIES. NOT UNEXPECTEDLY, DUJON TOOK SOMEWHAT MORE LEGALISTIC APPROACH. HE POINTED OUT SEVERAL TIMES THAT, SINCE THE AGREEMENT IS "DESTINED TO LAST FOR MANY YEARS", IT IS IMPORTANT THAT AGREEMENT PIN DOWN POINTS WHICH MIGHT POSSIBLY BECOME ISSUES SHOULD NATURE OF RELATIONS CHANGE SOMEWHAT IN THE FUTURE. THERE FOLLOW PROPOSED CHANGES IN TEXT WORKED OUT AT THIS MORNING'S MEETING WHICH REFLECT BOTH SPECIFIC CHANGES DESIRED BY GOS AND OUR OWN COUNTER MODIFICATIONS. EACH PROPOSED CHANGE IN TEXT IS FOLLOWED BY EXPLANATION OF ISSUE.

--SUBPARA 3: AFTER "PARTICULARLY IN THE BUREAU'S FORMATIVE STAGES" ADD "WHICH WOULD NOT BE FOR MORE THAN EIGHTEEN MONTHS." (DUJON EXPRESSED TWO CONCERNS: (1) THAT ANY LARGE INFLUX OF TEMPORARY STAFF AFTER THE FORMATIVE STAGE COULD SIGNAL A CHANGE IN THE SCOPE OF ACTIVITIES AND (2) FAILURE TO HIRE LOCAL STAFF COULD BE EXCUSED ON THE GROUNDS THAT WE WERE STILL IN FORMATIVE STAGE. FOR THAT REASON, GOS FEELS IT WOULD BE BETTER TO SPELL OUT LIMIT TO LENGTH OF FORMATIVE STAGE BASED ON EXPERIENCE ELSEWHERE. EMBASSY PICKED 18 MONTHS AS ARBITRARY FIGURE. WASHINGTON MAY WANT TO MODIFY IT, PREFERABLY DOWNWARD. BOTH SHABANGU AND DUJON ASSURED US GOS WOULD, OF COURSE, PERMIT TDY PERSONNEL TO VISIT BUREAU IN SAME MANNER AS THEY DO OTHERWISE TO OTHER COMPONENTS OF EMBASSY, LONG AFTER TERMINATION OF FORMATIVE STAGE.)

--SUBPARA 4: BETWEEN "UNITED STATES PERSONNEL" AND "AND

MEMBERS OF THEIR FAMILIES" ADD "ASSIGNED TO THE BUREAU, NOT EXCEEDING FOUR IN NUMBER." NEW SENTENCE WOULD, THEREFORE, READ, "ALL UNITED STATES PERSONNEL ASSIGNED TO THE BUREAU, NOT EXCEEDING FOUR IN NUMBER, AND MEMBERS OF THEIR FAMILIES WILL BE AFFORDED THE SAME PRIVILEGES AND IMMUNITIES AS OTHER ADMINISTRATIVE AND TECHNICAL STAFF OF THE EMBASSY." (GOS CONSIDERS THAT THIS IS NECESSARY TO ENSURE THAT THE GRANT OF PRIVILEGES IS LIMITED TO THE PERMANENT STAFF MENTIONED IN SUBPARA 3. IT WAS AGREED THAT SHOULD THERE BE ANY NEED TO INCREASE THE AMERICAN STAFF BEYOND FOUR IN THE FUTURE, THIS COULD BE HANDLED BY SIMPLE EXCHANGE OF LETTERS. ALTHOUGH EMBASSY DOES NOT SEE NECESSITY OF THIS ADDITIONAL CLAUSE, IT WAS NOT FELT WORTH ARGUING ABOUT.)

--SUBPARA 5: REWRITE TO READ, "THE FBIS WILL OPERATE OUT OF SPACE TO BE RENTED IN A COMMERCIAL BUILDING IN MBABANE AND WILL ONLY EMPLOY ROOFTOP OR GROUND LEVEL RECEIVING

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CONFIDENTIAL SECTION 02 OF 02 MBABANE 1549

CORRECTED COPY (TEXT PARA 5)

ANTENNAE IN A REASONABLE INCONSPICUOUS MANNER."
(THERE IS APPARENTLY LINGERING SUSPICION THAT WE
WILL TRANSMIT OR THAT GOVERNMENT MAY COME UNDER
CRITICISM FOR PERMITTING US TO DO SO. THEREFORE,
RESTRICTING LANGUAGE TO EMPHASIZE RECEIVING NATURE OF FBIS
OPERATIONS WAS DESIRED.)

--SUBPARA 6: REPLACE "REASONABLE" WITH "TWELVE HOURS"
AND AFTER "UNITED STATES EMBASSY" ADD "OR SUCH
LESSER PERIOD AS MAY BE MUTUALLY AGREED UPON BY BOTH
PARTIES." (THIS ADDITION, PROMPTED BY DUJON'S PENCHANT
FOR PRECISION, IS ACTUALLY MORE FAVORABLE TO US THAN DRAFT
TEXT.)

--SUBPARA 7: ADD, "SUBSEQUENT TO SUCH NOTICE, THE
SWAZILAND GOVERNMENT MAY REQUEST THE FBIS TO LIMIT ITS
ACTIVITIES TO THOSE ADMINISTRATIVE PROCEDURES REQUIRED TO
CLOSE THE BUREAU." (GOS WAS OBVIOUSLY CONCERNED THAT
BUJEAU COULD KEEP UP NORMAL OPERATIONS DURING TERMINATION
PERIOD, INCLUDING REPORTING TO WASHINGTON AND PUBLIC
CONSUMERS MATERIAL DETRIMENTAL TO SWAZILAND. WE REJECTED
ORIGINAL SUGGESTION FROM DUJON THAT SWAZI OFFICIAL BE
AUTHORIZED TO CENSOR MATERIAL REPORTED TO WASHINGTON
DURING THIS TERMINATION PERIOD. WE FELT, SINCE THE PURPOSE
OF THE TERMINATION PERIOD WOULD BE TO CLOSE DOWN IN AN
ORDERLY FASHION, IT WOULD BE BETTER TO ACCEDE TO A POSSIBLE
SWAZI REQUEST THAT REPORTING ACTIVITIES BE STOPPED.
FINDING THIS FORMULATION TOOK UP THE MAJOR PART OF
THE MEETING, AND EMBASSY HOPES VERY MUCH THAT IT WILL
BE ACCEPTABLE TO WASHINGTON. WILLIAMS AND I BELIEVE
IT IS ESSENTIAL TO FIND FACE SAVING DEVICE FOR DUJON.
OTHERWISE, WE WILL HAVE TO RAISE DISCUSSIONS TO HIGHER
POLITICAL LEVEL AGAIN.)

4. NEXT STEP: PERMSEC SHABANGU WOULD LIKE TO PRESENT
REVISED DRAFT TO CABINET NO LATER THAN TUESDAY, MAY 19
SO THAT ACTION CAN BE TAKEN AT CABINET MEETING ON FOLLOWING
TUESDAY, MAY 26. AS MENTIONED ABOVE, BOTH DPM'S OFFICE
AND EMBASSY HOPE AGREEMENT CAN BE SIGNED BEFORE MY SCHEDULED
DEPARTURE ON JUNE 5.

5. REQUEST APPROVAL OF DRAFT TEXT AS REVISED ABOVE
BY 08 MAY 19 AND CIRCULAR 175 AUTHORIZATION ASAP.
MATHERON

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REF ID: A66666

Department of State

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DRAFTED BY AF/S: CHANSON;DH

APPROVED BY AF/S: DSIMPSON

AF/L: NELY

L/T: CVILLSON

FBIS: WKLEIN

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TO AMEMBASSY MBABANE PRIORITY

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C O N F I D E N T I A L STATE 089788

E.O. 12065: GDS (4/8/87) (SIMPSON, D.)

TAGS: PINT, WZ

SUBJECT: FBIS INSTALLATION

REF: MBABANE 0913

1. (CONFIDENTIAL - ENTIRE TEXT).

2. REGRET DELAYED RESPONSE TO REFTEL.

3. EMBASSY'S PROPOSED TEXT OF BILATERAL AGREEMENT BETWEEN USG AND GOS RE FBIS INSTALLATION HAS BEEN REVIEWED BY FBIS AND STATE LEGAL ADVISORS. FBIS LEGAL ADVISOR WITH CONCURRENCE OF STATE LEGAL ADVISOR SUGGESTS THE FOLLOWING CHANGES BE MADE TO PROPOSED TEXT (CHANGES CORRESPOND TO SUBNUMBERED PARAS OF PARA 4 REFTEL):

-- SUBPARA 1: CHANGE "FROM THE PUBLIC PRESS OF TEN COUNTRIES IN SOUTHERN AFRICA" TO "FROM THE PUBLIC PRESS OF SOUTHERN AFRICAN COUNTRIES". NOTE DELETION OF NUMBER "TEN".

-- SUBPARA 2: CHANGE "THE FBIS WILL ALSO MAKE AVAILABLE FREE OF CHARGE MATERIALS..." TO "THE FBIS WILL ALSO MAKE AVAILABLE FREE OF CHARGE OTHER FBIS MATERIALS..."

-- SUBPARA 3: DELETE WORDS "RESIDENT IN SWAZILAND: FROM SENTENCE BEGINNING "BUREAU MAY BE STAFFED BY UP TO FOUR AMERICANS..."

-- SUBPARA 4: CHANGE SENTENCE "ALL UNITED STATES PERSONNEL WILL BE..." TO READ "ALL UNITED STATES PERSONNEL AND MEMBERS OF THEIR FAMILIES WILL BE..."

-- SUBPARA 5: DELETE WORD INCONSPICUOUS (SIC) AND ADD "IN A REASONABLY INCONSPICUOUS MANNER" TO END OF SENTENCE. SUGGESTED VERSION WOULD READ "THE FBIS WILL OPERATE OUT OF SPACE TO BE RENTED IN A COMMERCIAL BUILDING IN MBABANE AND WILL EMPLOY ROOFTOP OR GROUND-LEVEL ANTENNAE IN A REASONABLY INCONSPICUOUS MANNER."

-- SUBPARA 6: ADD "REASONABLE" BETWEEN WORDS "UPON NOTICE". SUGGESTED VERSION WOULD READ "...MAY BE INSPECTED FREELY BY APPROPRIATE SWAZILAND GOVERNMENT OFFICIALS UPON REASONABLE NOTICE TO THE UNITED STATES EMBASSY".

-- SUBPARA 7: CHANGE "NINETY DAYS" TO "SIX MONTHS".

NOTE: FBIS LEGAL ADVISOR SUGGESTS TIME LIMIT TO TERMINATE AGREEMENT BE STRETCHED AS MUCH AS POSSIBLE UP TO DESIRED LIMIT OF SIX MONTHS IF SIX MONTH LIMIT IS UNACCEPTABLE TO GOS.

PLEASE NOTE THAT THESE ARE SUGGESTED CHANGES TO BE PROPOSED TO GOS BUT NOT INSISTED UPON SHOULD GOS STRONGLY DISAGREE.

4. CIRCULAR 175 AUTHORIZATION IS REQUIRED. DEPT. IS PREPARING NECESSARY MEMORANDA NOW AND WILL ADVISE WHEN AUTHORIZATION IS RECEIVED.

5. FBIS/W WISHES TO THANK AMBASSADOR AND AID LEGAL ADVISOR FOR WISELY INCLUDING TELEVISION IN PARA 1 OF PROPOSED TEXT. CLARK

S1 FBIS

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